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Honorable Judge Marc Barreca
Location: Zoom (instructions below)
Hearing Date: June 22, 2022
Hearing Time: 10:00 a.m.
Response Due: June 15, 2022

IN THE U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

TIMOTHY DONALD EYMAN,

Debtor.

Chapter 7

Case No. 18-14536-MLB

TRUSTEE'S OBJECTION TO DEBTOR'S
EXEMPTIONS IN BANK ACCOUNTS;
NOTICE OF HEARING THEREON, AND
CERTIFICATE OF SERVICE

I. HEARING NOTICE

TO: CLERK OF THE BANKRUPTCY COURT
TO: TIMOTHY DONALD EYMAN, DEBTOR
TO: LARRY B. FEINSTEIN, COUNSEL FOR DEBTOR
TO: U.S. TRUSTEE

PLEASE TAKE NOTICE that Virginia Burdette ("Trustee"), solely in her capacity as the duly appointed Chapter 7¹ Trustee in the above captioned proceeding has filed a motion seeking an order (1) denying or limiting the claimed exemption in the above captioned proceeding asserted by Timothy Donald Eyman ("Debtor") in four deposit accounts ("Accounts") the Debtor maintained on December 17, 2021 ("Conversion Date") because the asserted exemption is in excess of the amount authorized by the statute Debtor relies on for claiming said exemption.

The Motion is set for hearing as follows:

Judge: Honorable Marc Barreca

Time: 10:00 A.M.

¹ Any chapter or section references in this objection is to the United States Bankruptcy Code, 11 U.S.C. §§101-1532 unless otherwise noted herein.

OBJECTION TO DEBTOR'S EXEMPTIONS - 1

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Place of Hearing:

Zoom

<https://www.zoomgov.com/j/1607704823?pwd=TUYxditUQ211OWdNeXVudYlZ5bTdBUT09>

Meeting ID: 160 770 4823

Passcode: 781136

One tap mobile

+16692545252,,1607704823# US (San Jose)

+16692161590,,1607704823# US (San Jose)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 669 216 1590 US (San Jose)

+1 646 828 7666 US (New York)

+1 551 285 1373 US

Meeting ID: 160 770 4823

Date: June 22, 2022

IF YOU OPPOSE the Motion, you must file your written response with the Clerk's office of the bankruptcy court and deliver copies to the undersigned NOT LATER THAN THE RESPONSE DATE, which is **June 15, 2022**, as indicated above. If you file a response, then you are also required to appear at the hearing.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and strike the hearing.

II. RELIEF REQUESTED

COMES NOW the Trustee, and files this Objection ("Objection") to the Amended Exemptions Asserted by Debtor in his amended Schedule C, Dkt. 427 at 11-13. The Trustee has already objected to the homestead exemption ("Homestead Objection") asserted by Debtor and purportedly Debtor's non-filing spouse. *ECF Dkt. 432*. This objection supplements the Homestead Objection which has been continued to the same time this Objection is being noted for hearing.

III. FACTUAL SUMMARY

1. Debtor voluntarily commenced this proceeding as a Chapter 11 on November 28, 2018 ("Petition Date"). *ECF Dkt. No. 1*.

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1 2. Debtor confirmed his Fourth Amended Chapter 11 Plan of Reorganization Dated April 4,
2 2020, *ECF Dkt. 270*, (“Plan”) on April 8, 2020. *ECF Dkt. 274*.

3 3. The Plan addressed what property would and would not be property of a Chapter 7
4 bankruptcy estate if a post-confirmation conversion was ordered by providing:

5 If upon further motion or hearing, this case is converted to a case under
6 Chapter 7 of the Code, all property, **whether residing in the Estate, or**
7 **acquired by the Debtor during the pendency of the Chapter 11 case** as
8 provided under Section 541 of the Bankruptcy Code shall **automatically**
9 **vest in the Chapter 7 bankruptcy estate.**

10 *Plan at §6.13, emphasis added.*

11 4. This proceeding was converted from a Chapter 11 proceeding to a proceeding under
12 Chapter 7 by order of this Court on the Conversion Date. *ECF Dkt. 408*.

13 5. Trustee was appointed by order of this Court the same day the order converting the case
14 was entered. *ECF Dkt. 409*.

15 6. Debtor was ordered to file post-conversion schedules the same day the order converting
16 the case was entered. *ECF Dkt. 412*.

17 7. Debtor filed his post-conversion schedules (“Schedules”) on January 1, 2022. *ECF Dkt.*
18 *427*.

19 8. The deadline for the Trustee to object to Debtor’s exemptions was extended by order of
20 this court on March 1, 2022 to allow timely objections to the Debtor’s exemptions on or
21 before May 25, 2022. *ECF Dkt. 443*.

22 9. In the Schedules, Debtor listed the Accounts as, “Bank of America; Amounts in 4 (sic)
23 accounts listed in Declaration. Represents gifts, LDF, PI, loan repayments; all post-
24 petition.” *Id. at 7*.

- 1 10. Debtor claimed the amount in the Accounts was \$10,618.00². *Id.*
- 2 11. Debtor has claimed an exemption for the full amount disclosed in the Schedules as being
- 3 on deposit in the Accounts pursuant to RCW 6.15.010(1)(d)(ii). *Id.* at 12.
- 4 12. Debtor has also claimed an exemption in a “Rental Security Deposit and Last Month’s
- 5 Rent: Carol Williams.” *Id.*
- 6 13. The Debtor also asserts in his Schedule C that the Accounts are “Not property (sic) of the
- 7 estate; all post-filing.”
- 8 14. Contrary to Debtor’s assertions, §6.13 of the Plan clearly makes these admittedly post-
- 9 petition deposits in the Accounts property of the estate.
- 10

11 IV. ARGUMENT

12 a. Debtor is limited to \$3,000 in aggregate exemptions under RCW

13 6.15.010(1)(d)(ii), and has used that exemption to protect his security deposit.

14 A debtor is entitled to claim exemptions in property of the estate that is exempt under

15 state law “. . . on the date of the filing of the petition . . .” §522(b)(3)(A). When a case is

16 converted, the conversion does not change, *inter alia*, the date of the filing of the petition.

17 §348(a) *see also Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018) (“A debtor’s exemptions

18 have long been fixed at ‘the date of the filing of the [bankruptcy] petition’). On the Petition

19 Date, as well as the Conversion Date, the exemption afforded to Washington Residents under the

20 “wild card” exemption of RCW 6.15.010(1)(d)(ii) for personal property that does not have a

21 specific exemption. *Id.*

22

23

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25 ² Based on information provided to the Trustee, the amount on deposit in the Accounts on the

26 Conversion Date was actually \$20,610.37 in the aggregate. Determination of the amount on deposit in the Accounts is not necessary for resolving the objection.

Debtor has exhausted the full amount available to him under the wild card exemption for the security deposit, and has actually over-asserted the exemption there by \$500. Because Debtor has exhausted the amount he is entitled to use as a wild card under applicable law, he cannot assert an exemption in the Accounts under the wild card exemption.

V. PRAYER FOR RELIEF

For the reasons stated above, the Trustee respectfully requests this Court enter an order denying the asserted exemption of the Debtor in the Accounts

Respectfully submitted this 25th day of May, 2022.

SCHWEET LINDE & COULSON, PLLC

/s/Michael M. Sperry

Michael M. Sperry, WSBA#43760

Thomas S. Linde, WSBA#14426

Latife H. Neu, WSBA#33144

Attorney for Virginia Burdette, Chapter 7 Trustee

CERTIFICATE OF SERVICE

I, Michael M. Sperry, hereby certify that, on the date below, a true and correct copy of the foregoing document will be delivered to the following by the Court's CM/ECF system:

Susan M Edison on behalf of Counter Defendant State of Washington
BCUEdison@atg.wa.gov

Larry B. Feinstein on behalf of Debtor Timothy Donald Eyman
1947feinstein@gmail.com, kpscordato@gmail.com; feinsteinlr71744@notify.bestcase.com

Dina Yunker Frank on behalf of Counter Defendant State of Washington
BCUYunker@atg.wa.gov

Seth Goodstein on behalf of Spec. Counsel Goodstein Law Group PLLC
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Carolyn A Lake on behalf of Defendant Goodstein Law Group PLLC
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OBJECTION TO DEBTOR'S EXEMPTIONS - 5

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1 Robert M. McCallum on behalf of Spec. Counsel Robert McCallum
2 jbonwell@lesourd.com

3 Eric S Newman on behalf of Counter Defendant State of Washington
4 Eric.Newman@atg.wa.gov, Jessica.Buswell@atg.wa.gov; ATSeaEF@atg.wa.gov

5 Eric S Newman on behalf of Interested Party State of Washington
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7 Kathryn Scordato on behalf of Debtor Timothy Donald Eyman
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15 United States Trustee
16 USTPRegion18.SE.ECF@usdoj.gov

17 Signed at Kent, Washington on May 25, 2022.

18 /s/ **Michael M. Sperry**
19 Michael M. Sperry